Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

To: The Commission

REPLY COMMENTS OF CELLULAR SERVICE, INC.
& COMTECH MOBILE TELEPHONE COMPANY

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Summary

Cellular Service, Inc. ("CSI") and ComTech Mobile Telephone Company ("ComTech"), cellular resellers in California, reply to the comments of the cellular carriers who uniformly oppose any right of a cellular reseller to interconnect its switch with a carrier's facilities. The carriers' opposition reflects nothing more than an effort to avoid more meaningful competition.

First, contrary to the carriers' assertions, the mobile communications market for cellular-like service is not yet fully competitive and will not be fully competitive for at least two years or longer. For the moment, then, cellular carriers exercise market power and have used that market power to frustrate the cellular resellers' ability to expand service and reduce costs for their subscribers. The prospect of competition by providers of Personal Communications Services and other new mobile technologies will not compensate resellers for the injury that will incur in the interim or otherwise serve the public interest in more meaningful competition.

Section 201(a) of the Communications Act of 1934 and prior Commission decisions compel recognition of a cellular reseller's right of interconnection with a carrier's facilities. The Commission is required to provide interconnection if such interconnection is "necessary or desirable in the public interest," and the Commission has previously determined that such interconnection should be ordered if it is "privately beneficial without being publicly detrimental." There is no basis to

justify the Commission's departure from that established standard.

Nor should the Commission attempt to resolve carrier allegations of undue cost and technical incompatibility in the rulemaking. The cellular resellers have provided ample evidence and expert opinion to counter the contentions of the carriers. The Commission should not expend its limited resources trying to resolve that dispute on a nationwide basis. Rather, the Commission should utilize its limited resources to dispose of specific complaints relating to specific requests to interconnect with a particular carrier. In no event, however, should the Commission second-guess the resellers' decision to invest millions of dollars in switches. If the resellers' judgment is ill-founded, the resellers will pay the price with lower profits and perhaps with their very survival. If, however, the cellular resellers' investment is a sound one, the public will be rewarded with improved service and lower costs.

Finally, there is no basis to preempt State regulations concerning interconnection. California is the only State to date which has ordered interconnection for resellers, and even in that situation, the reseller's right is dependent on the reseller's development of an engineering plan demonstrating technical compatibility and a willingness to absorb the cost of interconnection. California, then, has done nothing more than to recognize the very same right which the resellers seek in the instant proceeding. There is no record to justify any Commission

conclusion that California's regulation or the regulation in any other state will thwart or negate any federal policy concerning interconnection.

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Cellular Service, Inc., ("CSI") and ComTech Mobile Telephone Company ("ComTech"), acting pursuant to the Commission's Second Notice of Proposed Rule Making ("Notice") in the above-referenced docket, hereby reply to the comments of the FCC-licensed cellular carriers with respect to CSI and ComTech's request that the Commission recognize a cellular reseller's right to interconnect its switch with the Mobile Telephone Switching Office ("MTSO") of the FCC-licensed cellular carriers.[1]

Introduction

The cellular carriers predictably oppose the imposition of any obligation on Commercial Mobile Radio Service ("CMRS") providers to provide interconnection to any other CMRS provider, including any right of a cellular reseller to interconnect its facilities with those of a cellular carrier. The cellular

[1]References in these reply comments to a "carrier" shall mean the FCC-licensed cellular carriers. Similarly, references to a "reseller" shall refer only to cellular resellers.

carriers offer a "parade of horribles" that will ensue if the Commission should authorize such interconnection.

The carriers' arguments cannot withstand reasonable scrutiny. Those arguments misstate the scope of competition in the CMRS marketplace, mischaracterize applicable law, and misrepresent the impact of any Commission decision to recognize a reseller's right of interconnection. The flaws of the carriers' arguments are perhaps exemplified by the inherent contradiction in their position: on the one hand, the carriers commend the Commission for refusing to impose regulations in a CMRS market which is still evolving and whose characteristics are still unknown; on the other hand, the same carriers claim that enough is known about the CMRS marketplace to deny the resellers' request for interconnection to the carriers' facilities.

The Commission should recognize the carriers' arguments for what they are: an effort by vested interests to avoid more meaningful competition. The Commission should reject those arguments and instead adhere to its prior pronouncements. The marketplace -- not the carriers' boundless fears -- should decide whether the resellers' investment of millions of dollars in switches is in the public interest. If the resellers are wrong -- as the carriers contend -- cellular resellers will pay the price in lower profits and perhaps with their very survival; if the resellers' investment proves to be sound, however, that same marketplace will be rewarded with lower costs and improved service.

I. CMRS Marketplace Is Not Fully Competitive

The cellular carriers uniformly contend that the CMRS marketplace is competitive now and that no Commission intervention is necessary to provide resellers or other CMRS providers with interconnection to the cellular carriers. Thus, AirTouch Communications, Inc. ("AirTouch") claims that recognition of a reseller's right to interconnect with a carrier's MTSO would result in "harmful government interference in a competitive market." AirTouch Comments at 20. Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") similarly argues that there is no need for "extensive [Commission] intrusion into this competitive market" since "carriers are interconnecting where they have the economic incentive to do so." Bell Atlantic Comments at 3-4. The Cellular Telecommunications Industry Association ("CTIA") likewise asserts that the "CMR marketplace is competitive" and that "concerns regarding a firm's ability to exercise the prerequisite market power or to retain control over essential facilities are rendered insignificant." CTIA Comments at 4-6.

In fact, the CMRS marketplace is not fully competitive now and will probably not be fully competitive for at least several years. The cellular carriers are currently the only mobile communications entities providing two-way interconnected voice services on a nationwide basis. Commission rules for Personal Communications Services ("PCS") only require PCS providers to serve one-third of their area populations within five years (or

no sooner than the year 2000), and some PCS providers estimate that it will take longer than that to become a meaningful force in the communications market. See Comments of Pacific Telesis Mobile Services ("PacTel") at 5 (AirTouch's president estimates that "'it will take PCS carriers seven or eight years to deploy [PCS] networks as ubiquitous as cellular'"). Nextel Communications, Inc. ("Nextel") -- the major expected provider of Enhanced Special Mobile Radio services -- now estimates that it will not be able to provide nationwide wireless service until the end of 1996 -- and even that estimate must be taken with some degree of skepticism in light of Nextel's inability to meet previously-established deadlines for the inauguration of meaningful service.[2] See Nextel Comments at 2.

Even the carriers' own experts acknowledge that the CMRS marketplace is not fully competitive: Bruce M. Owen, an economic expert retained by AT&T Corp. ("AT&T"), praises the Commission for not imposing interconnection obligations because "in many cases the Commission does not yet know which CMRS services will compete in a substantial way." AT&T Comments, Exhibit 1 at 3. CTIA echoes Owen's observation, claiming that the CMRS marketplace is too nascent for CMRS providers to "know their interconnection needs." CTIA Comments at 7. CTIA further observes that it would be impossible for the Commission to

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[2]The Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") grandfathered Nextel and similar systems as a private carrier only until August 10, 1996 in the expectation that Nextel would be a mature service by that date.

establish generic interconnection standards because "most such networks have not yet been designed" -- thus providing further confirmation that the so-called competitive marketplace remains an expectation rather than a reality. CTIA Comments at 13-14.

The Commission need not rely on the comments of the carriers and their experts to recognize that the CMRS marketplace is not fully competitive yet. The resellers' own experience demonstrates the absence of any meaningful competition.

The underlying premise of a competitive marketplace is that a consumer will have alternatives in the event one service provider refuses to provide requested services. Resellers have no alternatives. They have been rebuffed by all of the cellular carriers in their effort to obtain interconnection. The Commission needs no better evidence of a marketplace failure. If they had alternatives, resellers would certainly prefer to utilize them instead of pursuing remedies in administrative processes which involve years of delay and an uncertain outcome.

II. Applicable Legal Standard Requires Recognition of Resellers' Interconnection Rights

In their comments, CSI and ComTech pointed out that decisions concerning interconnection must be decided in accordance with the standard set forth in Hush-A-Phone v. United States, 238 F.2d 266 (D.C. Cir. 1956). See CSI & ComTech Comments at 5. That standard requires a grant of an interconnection request if such request is "privately beneficial without being publicly detrimental." 238 F.2d at 269. In making any such

judgment, moreover, a connecting carrier cannot assume a priori that it would incur undue economic costs or technical harm; rather, any denial based on public detriment must be based on record evidence concerning the particular request. AT&T, 60 FCC2d 939, 943 (1976).

In its Notice, the Commission acknowledged the foregoing argument but did not affirm or disavow its continued validity. Instead, the Commission tentatively concluded that "a market power analysis should be the basic analysis we conduct in determining whether to impose specific interconnection obligations." Notice at ¶ 41. The Commission then raised questions whether it should consider other public policies "for imposing interconnection obligations in the absence of significant market power." Notice at ¶ 41 (footnote omitted).

Not surprisingly, the carriers endorse the Commission's proposal to use a market power analysis and then conclude that they do not exercise monopoly power or control essential facilities that would justify imposition of any interconnection obligation on them. The carriers' response, like the Commission's analysis, fails to explain the disregard of the Hush-A-Phone standard which the Commission endorsed almost two decades ago. The carriers' response -- and the Notice -- similarly fail to recognize that the CMRS marketplace is not competitive in the provision of cellular-like services and that

the cellular carriers do now and will for the near future have market power under any reasonable definition of the term.[3]

Even if the Commission were to rely on a market power analysis, the result would still require recognition of a cellular reseller's right to interconnect with the cellular carriers. The Commission itself recognized the possibility of anticompetitive conduct and the need for regulatory intervention if "considerable difference exists in market share among CMRS firms. . . " Notice at ¶ 32. The cellular carriers have the overwhelming share of the market in California. See Petition of the State of California, FCC 95-195 (May 19, 1995) at ¶ 60. That disproportionate distribution certainly satisfies any marketplace analysis.

The cellular resellers request for interconnection also satisfies the four (4) elements that courts have traditionally utilized in antitrust cases. E.g. MCI Communications v. AT&T, 708 F.2d 1081, 1132-33 (7th Cir. 1983), cert. denied, 464 U.S. 891 (1983). First, the facility in question -- the cellular carrier's MTSO -- is controlled by a party with power equal to that of a "monopolist;" there are only two cellular carriers in the market, and the duopoly structure inherently limits the

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[3]CTIA provides a detailed review of antitrust law with respect to the definitions of the relevant market. According to CTIA, cellular carriers are part of a large CMRS marketplace that includes payphone providers and paging systems. CTIA Comments at 9-13, 28-30. No reasonable person could conclude that paging systems or payphone providers are true competitors of cellular service today and that cellular resellers could somehow seek relief in the marketplace with those other non-cellular services.

availability of alternative facilities. Second, cellular resellers do not have the ability to duplicate the cellular carrier's MTSO. Third, cellular carriers have steadfastly refused to provide cellular resellers with access to the MTSO -- a decision which the carriers want this Commission to endorse in the instant docket. And fourth, there is nothing inherently infeasible about the carriers providing the resellers with access to the MTSO; the Commission has been authorizing carrier-to-carrier interconnection since its inception.

This Commission's decision on reseller interconnection, however, should not rest on antitrust analysis. Nothing in Section 201(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 201(a), or the Commission's prior decisions restricts interconnection decisions to a finding that interconnection involves access to an essential facility controlled by a monopolist. Quite the contrary. Section 201(a) broadly requires common carriers to provide interconnection when the Commission finds that such interconnection is "necessary or desirable in the public interest." As the Commission itself recognized in its Notice, that broader mandate has justified decisions in the past to authorize interconnection despite the absence of market power. Notice at ¶ 41 n. 74.

The carriers have not offered any authority that would justify the Commission's departure from that approach and the adoption of a new policy that would restrict interconnection only

to situations involving dominant carriers.[4] The Commission may have great expectations that the CMRS marketplace will reflect robust competition within a few years; but Commission policy for the immediate future must be based on reality rather than on expectations. And, for the next couple of years at least, cellular resellers will remain the only meaningful competition in the cellular-like communications market.

III. Cost-Benefit Analysis Inappropriate in Rulemaking

All of the carriers contend that the reseller switch proposed by CSI and ComTech is technically incompatible with the cellular carriers' plant and will, in any event, produce costs that would outweigh any benefit. Thus, AirTouch claims that the reseller switch "will only result in higher costs and no new capacity," that recognition of a reseller's right of interconnection would constitute "harmful government interference in a competitive market," and that recognition of a reseller's interconnection rights would "create an unprecedented chill on future industry investments and innovation." AirTouch Comments at 19-20. CTIA agrees, stating that "[t]he administrative burdens created by requiring non-dominant firms to unbundle their networks are enormous, and with no evident corresponding benefits to the consumer." CTIA further bemoans the "[r]egulatory

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[4]AirTouch, for example, claims that the Commission is permitted to deny interconnection requests "where such interconnection would be inefficient (i.e., more costly than an alternative) and thus unreasonable." AirTouch Comments at 2. AirTouch does not cite any legal authority for that bold proposition.

complexities [that] would surely arise over how to define each separable network component and to establish its proper price" -- a process which, according to CTIA, cannot be left to private negotiation because arguments will invariably arise "that the owner of the facility [i.e., the cellular carrier] has an incentive to demand terms that disadvantage the potential competitor. . . ." CTIA Comments at 33. CTIA then provides a catalog of alleged technical obstacles which render the reseller switch impractical. CTIA Comments at 38. See AirTouch Comments at 24.

The Commission cannot and should not take the carriers' claims of undue costs and technical incompatibility at face value. At the outset, it bears emphasizing that the carriers have not provided any data to support their claims about undue costs. And although the carriers assert that interconnection will discourage investment in new facilities and innovative services, they cannot cite a single example where the prospect of cellular reseller interconnection has discouraged any investment or innovation. Quite the contrary. In opposing California's petition to retain regulatory authority over cellular rates, the carriers touted the scope of their respective investments -- even though California had already authorized reseller interconnection and the unbundling of rates to accommodate such interconnection. See Reply of Cellular Resellers Association, Inc., et al. (PR File No. 94-SP3, Oct. 19, 1994) at 30-31.

Nor is there any inequity from a public interest perspective in authorizing interconnection for resellers who have not made investments to support construction of the cellular carriers' facilities. The cellular carriers did not perceive any inequity in the imposition of an obligation on the Local Exchange Carriers ("LECs") to provide interconnection to the carriers even though the carriers had not provided any monies to cover the costs of the LECs' facilities. If contribution of capital to the connecting carrier's facilities were a prerequisite to interconnection, Section 201(a) would be a nullity.

The carriers' concerns with the costs of unbundling are also unfounded. Unbundling requirements are a common means to foster competition. E.g. Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC2d 384 (1980) (subsequent history omitted) (unbundling of basic and enhanced services required); National Association of Regulatory Utility Commissioners v. FCC, 880 F.2d 422, 430 (D.C. Cir. 1989) (unbundling of inside wiring authorized). To be sure, there are costs in any carrier's obligation to establish interconnection charges or to unbundle costs. But the Commission has never hesitated to require unbundling or new changes to promote competition -- even if the beneficiary is a reseller who has contributed no capital for the connecting carrier's facilities. Unbundling and separate charges are appropriate vehicles to ensure that a reseller or other carrier does not pay for services or facilities which it does not use. E.g., MTS/WATS Market Structure, 97 FCC2d 682, 876-77 & 882

n.68 (1983), recon., 97 FCC2d 834 (1984), aff'd in part and remanded in part on other grounds, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985) (long distance resellers exempted from CCL access charges); MTS/WATS Market Structure, 61 RR2d 417 (CCB 1986) (inward WATS resellers granted credit for CCL access charges because resellers should not have to "pay additional access charges to the same exchange that has already received payment of switched access charges from the underlying carriers whose service is being resold"); Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, 7425 (1992) (subsequent history omitted) ("we will require that the LECs implement expanded interconnection by creating new connection charge elements for services they provide to interconnectors, rather than through formal unbundling of the special access rate structure into separate transmission and connection charges").

CSI and ComTech's proposal includes an additional safeguard which should allay any legitimate concerns of the carriers. Any reseller obtaining interconnection should be prepared to (1) demonstrate the technical compatibility of its switch with the carrier's facilities and (2) pay the reasonable costs of such interconnection. If the carriers are reimbursed and assured of such technical compatibility, there is no reason why the carriers would need to raise prices to their subscribers; and if the cost to the resellers are cost prohibitive, the resellers will pay the

price in the marketplace through reduced subscribership and, perhaps, with their very survival. But those are decisions for the marketplace to make -- not the Commission.

In no event, however, should the Commission attempt to resolve the issue of technical compatibility and undue cost on an industry-wide basis. CSI and ComTech, as well as other reseller representatives, have provided expert testimony and declarations to support the technical and financial feasibility of the reseller switch proposal.[5] E.g. Comments of Time Warner Telecommunications, Declaration of Alex D. Felker; CSI and ComTech Comments (CC Dkt. 94-54 September 12, 1994), Exhibit 1 at 2-8. CSI and ComTech pointed out in their comments of June 14, 1995, that they and other California resellers have already committed hundreds of thousands of dollars to the development of a switch in California. However considerable the experience and competence of its staff, the Commission does not have the resources to second-guess those market-based decisions on an industry-wide basis. The Commission should review those issues if and when they are raised in the context of a complaint involving a particular request to a particular carrier.

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[5]That expert testimony dispels each of the concerns registered by CTIA and AirTouch. See supra at 9. Thus, there is no reason to believe that establishment of a special port for reseller interconnection will be any more difficult than any other interconnection. Nor is there any basis to the carriers' claims that the reseller switch will frustrate validation of calls or the making of 911 calls.

IV. No Basis for Preemption of States

All of the carriers urge the Commission to preempt the States from imposing any interconnection obligations on CMRS providers. For its part, AirTouch claims that the Commission's denial of California's petition to retain regulatory authority over cellular rates constitutes a preemption of interconnection obligations and, if not, that the Commission should exercise its inherent authority under Section 2(b) of the Act, to preempt any such obligations. AirTouch Comments at 24-25. Bell Atlantic agrees with that latter proposal, claiming that the Commission's failure to preempt State interconnection requirements will result in a "patchwork of inevitably different State requirements." Bell Atlantic Comments at 7. AT&T shares that perspective: "The imposition of state interconnection policies requiring interconnection with CMRS facilities or the unbundling of these and other CMRS network functions would effectively negate nationwide CMRS service by forcing CMRS providers to engineer and construct State-specific CMRS facilities." AT&T Comments at 22.

The carriers' plea for State preemption cannot be squared with the law or the facts. To begin with, contrary to AirTouch's hope, the Commission did not preempt State interconnection requirements through the denial of State petitions to retain regulatory authority over cellular rates. Those decisions recognized that State requirements for unbundling, and thus interconnection, may fall within the "other terms and conditions" which Section 332(c)(3) authorizes the States to continue to

regulate. See Petition of the State of California, FCC 95-195 (May 19, 1995) at ¶ 143. Nor is there any basis to preempt such State regulation under the Commission's residual authority under Section 2(b) of the Communications Act.

To date, only one State has mandated interconnection for cellular resellers -- California. As a practical matter, California has done nothing more than (1) order the cellular carriers to provide technical and financial information to the cellular resellers, (2) authorize the cellular resellers to develop an engineering plan for the establishment of a switch that will be technically compatible with the carriers' facilities, and (3) order the carriers to unbundle rates on a market basis to facilitate the resellers' payment of any and all costs associated with interconnection -- but not for services or facilities which the resellers do not use. The most recent pronouncement of the California Public Utility Commission ("CPUC") on that interconnection obligation is annexed hereto and dispels any notion that the CPUC has ignored the carriers' concerns with costs or technical compatibility.

In this context, there is no factual basis for the Commission to conclude that State interconnection requirements will somehow negate or thwart any policy developed by this Commission. Louisiana Public Service Commission v. FCC, 476 U.S. 355, 375 n.4 (1986) (the FCC could not preempt State depreciation schedules since there was no showing that such State activity interfered with FCC regulation); National Association of

Regulatory Utility Commissioners v. FCC, supra, 880 F.2d at 429 ("the only limit that the Supreme Court has recognized on the State's authority over intrastate telephone service occurs when the State's exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communication"). Indeed, there could be only one policy of this Commission that would justify a preemption of State requirements like that adopted by California -- a Commission decision that resellers are not entitled to interconnect their facilities with the cellular carrier's MTSO.[6]

Of course, that latter policy is precisely the one the carriers would like the Commission to adopt. And the carriers' position on that score reflects the most glaring contradiction of their analysis. On the one hand, the carriers contend that resellers, like other CMRS providers seeking interconnection, should rely on the Commission's complaint process under Section 208 of the Act. E.g. Bell Atlantic Comments at 12; CTIA Comments at 15-16. However, the efficacy of that complaint process ultimately relies on a threshold Commission determination that cellular resellers have a right of interconnection. Without

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[6]It bears noting that the Commission previously preempted State regulation to the extent such State regulation frustrated this Commission's mandate for negotiated interconnection agreements between the carriers and the LECs. The Need to Promote Competition, 2 FCC Rcd 2910, 2912-13 (1987). In other words, the Commission used its preemption authority to promote interconnection -- not to thwart interconnection.

recognition of that right, no complaint could succeed and no damages could be awarded.[7]

The carriers' proposal thus creates a Catch-22 situation from which a reseller could never emerge successfully: the Commission adopts a policy prohibiting a reseller's right to interconnect with a cellular carrier's MTSO and advises resellers to rely on the Section 208 complaint process; when the frustrated cellular reseller files its suggested complaint, the Commission rules that no remedy is available because the cellular reseller does not have a right of interconnection. Commission policy should not rest on such sophistry.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is requested that (1) the Commission recognize a cellular reseller's right to interconnect with a cellular carrier's facilities under Section 201(a) of the Act, (2) the

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[7]The carriers' contradictory approach is perhaps illustrated best by AT&T's comments. AT&T laments the difficulties that will ensue for the carrier if the Commission should recognize a reseller's right to interconnection and then direct the parties to engage in good faith negotiations. AT&T fears that negotiation might result in a dispute which, in turn, would be brought to the Commission for resolution through a complaint: "If a CMRS provider is forced to provide interconnection when it would not be efficient to do so, negotiations over price would be difficult and the disappointed party might seek regulatory intervention." AT&T Comments at 18. According to AT&T, it would be better to shut the door completely to any reseller seeking interconnection and thus avoid the burdens that would be imposed on a carrier which had to explain itself to the Commission in a complaint proceeding. That course may be consistent with the carriers' economic interest but cannot be squared with the public interest in more effective competition.

Commission require cellular carriers to engage in good faith negotiations with cellular resellers requesting such interconnection, and (3) cellular carriers be required to provide any such interconnection under reasonable terms and conditions, which would include unbundled rates for services and facilities utilized by the cellular reseller.

Respectfully submitted,

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Decision 95-03-042 March 22, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion Into Mobile Telephone Service and Wireless Communications.	))))	I.93-12-007 (Filed December 17, 1993)

O P I N I O N

I. Background

On August 3, 1994, we issued Decision (D.) 94-08-022 adopting wholesale cellular rate unbundling as part of our overall policy of enhancing competition in the commercial mobile radio service market. Subsequent to the issuance of D.94-08-022, various parties filed applications for rehearing and requests to stay the decision pending resolution of the rehearing applications.

Although we have not yet issued our decision on the allegations of error raised in the rehearing applications, we did issue D.94-11-029 which denied the parties' requests to stay D.94-08-022. In D.94-11-029, we also directed the assigned Administrative Law Judge (ALJ) to take appropriate steps to solicit, for our consideration, the input of the parties regarding implementation measures to facilitate the unbundling process ordered in D.94-08-022. Accordingly, an ALJ ruling dated November 9, 1994 solicited supplemental comments on rate unbundling implementation as to (a) development of the unbundled rates and (b) the technical exchange of data and studies required to develop a reseller switch engineering plan. Comments were filed on November 30, 1994. By this decision, we address issues raised in parties' filed comments related to implementation of our unbundling program.

II. Quantification of Unbundled Rates

A. Position of Cellular Carriers

Parties express conflicting views over how unbundled rates are to be developed. Carriers generally oppose any unbundling of wholesale rates, based on the arguments presented in their applications for rehearing of D.94-08-022. Carriers' comments on the implementation of unbundling are thus offered subject to disposition of their applications for rehearing, and are not intended to endorse any form of wholesale rate unbundling. The carriers argue that if D.94-08-022 is taken to mean that the existing tariffed access charge is simply to be eliminated, then this order conflicts with discussion elsewhere in D.94-08-022 indicating that unbundled rates are to be "market-based," as determined by the carrier. Carriers claim there is apparent inconsistency between pronouncements which allow "cellular carriers to charge a market rate for these unbundled services" (D.94-08-022, mimeo at p. 80) and restrictions requiring that unbundling be "based upon existing tariffed elements with prices capped at existing levels." Carriers complain that "market-based" unbundling of the airtime rate from the access charge rate deprives them of recovery of the costs of certain required functions they will still perform for switch-based resellers. They claim these residual costs are embedded in the access charge which would be avoided by switch-based resellers. For example, carriers will still provide trunk line connection between the reseller switch and the MTSO.

The ALJ ruling solicited parties' comments on the merits and feasibility of setting the unbundled rate for competitive services equal to the existing contract charges paid by a carrier to the local exchange carrier (LEC) for access and interconnection. The carriers agree generally that the access and interconnection charges a carrier pays to each LEC are specified in a contract